

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

MICHAEL BEAL, et al.,

No. C 13-04911 LB

Plaintiffs,

v.

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS PLAINTIFFS'
FIRST AMENDED COMPLAINT**

ROYAL OAK BAR, et al.,

[Re: ECF No. 13]

Defendants.

Plaintiffs filed their Complaint and instituted this action in San Francisco Superior Court on April 29, 2011. Notice of Removal, ECF No. 1 at 1.¹ They filed a First Amended Complaint on September 13, 2013. *Id.* at 2; *see id.*, Ex. A, ECF No. 1-2 at 2 (state court docket); *id.*, Ex. D, ECF No. 1-7 (First Amended Complaint). Defendants never answered or otherwise responded to it. *See id.*, Ex. A, ECF No. 1-2 at 1-2.

On October 23, 2013, Defendants removed the action to federal court. *See id.* After all parties consented to the undersigned's jurisdiction, the court held an initial case management conference on February 13, 2014. 2/13/2014 Minute Order, ECF No. 12. At it, the court noted that Defendants had never answered the complaint, even though the time for doing so passed months before. The court then told Defendants' counsel to file a "pleading" so that the record for this action is clear and so Defendants would avoid default (and the subsequent motion practice required to set it aside).

¹ Citations are to the Electronic Case File ("ECF") with pin cites to the electronically-generated page numbers at the top of the document.

1 Defendants' counsel told the court that he would file a "pleading" the next day.

2 The next day Defendants did not file an answer. Instead, Defendants filed a motion to dismiss
3 under Federal Rule of Civil Procedure 12. *See* Motion, ECF No. 13. The court did not permit this.
4 The court told Defendants' counsel to file a "pleading," and motions to dismiss are not "pleadings."
5 *See* Fed. R. of Civ. P. 7(a) (only complaints (including counter- and cross- claims), answers, and
6 replies to answers are among the "pleadings" allowed in federal court); *cf.* Fed. R. Civ. P. (7)(a) &
7 (b) (distinguishing between "motions and other papers" and "pleadings").

8 In short, the court mentioned Defendants' failure to file an answer to the First Amended
9 Complaint to give Defendants a chance to file an answer and avoid the problems that follow from
10 that failure. Defendants long since missed the time for moving to dismiss. Accordingly, the court
11 **DENIES** Defendants' motion. Defendants shall file an answer to Plaintiffs' First Amended
12 Complaint no later than March 3, 2014. After doing so, Defendants may file any other motions that
13 are allowed by the Federal Rules of Civil Procedure.

14 **IT IS SO ORDERED.**

15 Dated: February 26, 2014



16 LAUREL BEELER
17 United States Magistrate Judge
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